

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

TODD JANSON, GERALD T. ARDREY, CHAD M.
FERRELL, and C & J REMODELING LLC, on behalf of
themselves and on behalf of all others similarly situated,

Plaintiffs,

v.

LEGALZOOM.COM, INC.,

Defendant.

Case No. 2:10-cv-04018-NKL

**MOTION TO DISMISS WITHOUT
PREJUDICE FOR IMPROPER VENUE**

Defendant LegalZoom.com, Inc. (“LegalZoom”) hereby moves the Court to dismiss Plaintiffs’ Petition without prejudice for improper forum pursuant to Rule 12(b)(3) of the Federal Rules of Civil Procedure. Under the forum selection clause to which Plaintiffs assented in purchasing documents on the LegalZoom website, exclusive venue lies in the courts of the city of Los Angeles, California.

1. On December 17, 2009, Plaintiff Todd Janson commenced this action by filing a Class Action Petition against LegalZoom in the Circuit Court of Cole County, Missouri, captioned *Todd Janson on behalf of Himself and all Missourians similarly Situated v. LegalZoom, Inc.*, No. 09AC-CC00737 (“Original Petition”). On January 15, 2010, Mr. Janson and additional Plaintiffs Gerald T. Ardrey, Chad M. Ferrell, and C & J Remodeling LLC filed an Amended Class-Action Petition captioned *Todd Janson, Gerald T. Ardrey, Chad M. Ferrell and C & J Remodeling LLC, on behalf of themselves and on behalf of all others similarly situated v. Legalzoom.com, Inc.*, No. 09AC-CC00737 (“Amended Petition” or “Am. Petition”).

2. In the Amended Petition, Plaintiffs seek to represent a class consisting of “[a]ll persons or entities in the state of Missouri that paid fees to LegalZoom for the preparation of legal documents from December 18, 2004 to the present.” (Am. Petition ¶ 19.)

3. On February 5, 2010, LegalZoom timely removed the action to this Court on diversity grounds pursuant to the Class Action Fairness Act, 28 U.S.C. section 1332(d).

4. LegalZoom’s principal business is to provide an online platform for customers to prepare their own legal documents. Customers choose a product or service suitable to their needs and input data into a questionnaire. Where applicable, the LegalZoom platform then generates a document using the product and data provided by the customer. (Declaration of Edward R. Hartman in Support of Motion to Dismiss (“Hartman Declaration”), submitted with this Motion, at ¶ 3.)

5. Count I of the Amended Petition alleges that LegalZoom is engaged in the unlawful practice of law in violation of RSMo. section 484.010 *et seq.* (Am Petition ¶¶ 34-39.) Count II seeks money had and received. (*Id.* ¶¶ 40-44.) Count III seeks monetary damages under the Missouri Merchandising Practices Act (“MMPA”), RSMo. section 407.010 *et seq.* (Am. Petition ¶¶ 45-51.) Count IV seeks injunctive relief under the MMPA. (*Id.* ¶¶ 52-59.)

6. Plaintiffs’ Amended Petition acknowledges that LegalZoom conducts its business through its website, www.legalzoom.com. (Am. Petition ¶ 6.) LegalZoom conducts no business with customers outside its website. (Hartman Declaration ¶ 4.) The Amended Petition alleges that Plaintiffs purchased documents from LegalZoom through LegalZoom’s website. (Am. Petition ¶¶ 13, 15.)

7. In the Amended Petition, Plaintiffs Ardrey, Farrell, and C & J Remodeling allege that their purchase of documents from LegalZoom was made “in late January 2008.” (*Id.* ¶ 15.)

In the Original Petition and an attached exhibit, Plaintiff Janson alleged that his purchase of documents from LegalZoom was made in November 2009. (Original Petition ¶¶ 10-13 and Exhibit 1 thereto.)

8. In both January 2008 and November 2009, the LegalZoom website's "Payment Information" page, on which customers entered their contact and shipping information, their credit card information, and any special instructions, contained a confirmation button reading "Proceed to Checkout." (Hartman Declaration ¶ 5 and Exhibit A attached thereto.) Although the webpage underwent minor cosmetic changes between January 2008 and November 2009, at all times next to the confirmation button was a legend reading "By clicking the Proceed to Checkout button, you agree to our Terms of Service." (*Id.*) The words "Terms of Service" were hyperlinked to LegalZoom's Terms of Service in effect in January 2008 and November 2009, both of which included a forum selection clause reading "I agree that California law shall govern any disputes arising from my use of this website, and that the courts of the city of Los Angeles, state of California, shall have exclusive jurisdiction over any disputes." (Hartman Declaration ¶¶ 6-7 and Exhibits B and C attached thereto.)

9. Plaintiffs are bound by the forum selection clause on the LegalZoom website because their use of that website gave rise to a valid and enforceable contract between each Plaintiff and LegalZoom, and because Plaintiffs were on notice of and assented to the contract terms, including the forum selection clause. The forum selection clause is enforceable because it is not unreasonable and does not contravene any public policy of Missouri.

WHEREFORE, Defendant LegalZoom.com, Inc. respectfully moves the court to dismiss without prejudice Plaintiffs' Amended Petition for improper venue pursuant to Rule 12(b)(3) of the Federal Rules of Civil Procedure.

Dated: February 26, 2010

Respectfully submitted,

BRYAN CAVE LLP

By: /s/ Robert M. Thompson

Robert M. Thompson MO #38156
James T. Wicks MO #60409
One Kansas City Place
1200 Main Street, Suite 3500
Kansas City, MO 64105
Tel.: (816) 374-3200
Fax: (816) 374-3300

John Michael Clear MO #25834
Michael G. Biggers MO #24694
James R. Wyrsch MO #53197
One Metropolitan Square – Suite 3600
211 North Broadway
St. Louis, MO 63102
Tel.: (314) 259-2000
Fax: (314) 259-2020

Attorneys for LegalZoom.com, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2010, the foregoing was electronically filed with the Clerk of Court and served by operation of the Court's electronic filing system upon all counsel of record.

Timothy Van Ronzelen
Matthew A. Clement
Kari A. Schulte
COOK, VETTER, DOERHOFF &
LANDWEHR, PC
231 Madison
Jefferson City, MO 65101
tvanronzelen@cvdl.net
mclement@cvdl.net
kschulte@cvdl.net

David T. Butsch
James J. Simeri
Mathew R. Fields
BUTSCH SIMERI FIELDS LLC
231 South Bemiston Ave., Suite 260
Clayton, MO 63105
butsch@bsflawfirm.com
simeri@bsflawfirm.com
fields@bsflawfirm.com

Edward D. Robertson, Jr.
Mary Doerhoff Winter
BARTIMUS, FRICKLETON, ROBERTSON
& GORNY
715 Swifts Highway
Jefferson City, MO 65109
chiprob@earthlink.net
marywinter@earthlink.net

Randall O. Barnes
RANDALL O. BARNES & ASSOCIATES
219 East Dunklin Street, Suite A.
Jefferson City, MO 65101
rbarnesjclaw@aol.com

Steven E. Dyer
10805 Sunset Office Drive, Suite 300
St. Louis, MO 63127
jdcpamba@gmail.com

/s/ Robert M. Thompson